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November 14, 1997

VIA HAND DELIVERY
Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208.*

Dear Mr. Caton:

Accompanying this letter please find an original and sixteen copies of the Reply Brief in Support of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, as well as electronic copies of the reply brief and the supporting reply affidavits in both WordPerfect 5.1 and their original format (either Wordperfect or Word). Eleven of the paper copies are for the Office of the Secretary and five are for the Common Carrier Bureau.

Please date stamp the extra copy of this letter and return it to the individual delivering this package. Thank you for your assistance in this matter.

Sincerely,

Austin C. Schlick

Austin C. Schlick

Enclosures

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina	CC Docket No. 97-208

To: The Commission

REPLY BRIEF IN SUPPORT OF APPLICATION BY BELLSOUTH FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN SOUTH CAROLINA

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November 14, 1997

EXECUTIVE SUMMARY

When considering any argument made by opponents of BellSouth's application for interLATA relief in South Carolina, this Commission should ask two thresholds questions. First, is the argument grounded in the checklist or any other specific requirement of section 271? Second, would the argument (if true) support requiring consumers to pay more for long distance service? If the answer to both questions is no, then the argument must be rejected out of hand. It simply has no relevance to the Commission's obligation to apply the 1996 Act to market facts in South Carolina.

Applying this straightforward screening device will go far toward fixing a broken process. Emboldened by the sweeping language of the Commission's Michigan Order, interexchange carriers and CLECs have come to see section 271 proceedings as the regulatory equivalent of a candy store. When a company such as BellSouth seeks relief after doing what the Act requires and securing state commission approval, it invariably faces a list of new demands constrained only by page limits. By dressing up their regulatory agendas as objections to Bell company applications, the CLECs and other parties seek to bypass interconnection negotiations and state commission arbitrations under sections 251 and 252, the Eighth Circuit's recent local competition decisions, and this Commission's own complaint and rulemaking processes.

Indeed, the long distance carriers, the CLECs, and even the Department of Justice ("DOJ") plainly view a 271 application as a chance to secure benefits or powers that they otherwise could never obtain under the deregulatory provisions of the Telecommunications Act. Section 271, in their view, supplants all other provisions of the 1996 Act with respect to Bell company operations, so that even requirements Congress directly forbade in other sections of the

statute may be forced upon the Bell companies as the price of interLATA entry. Such efforts to exploit the Commission's gate-keeping powers are wholly improper and threaten to undo the 271 process.

The ultimate losers from this breakdown are consumers. Billions of dollars are being wasted every year in overpayments to the major long distance carriers. As SNET's experience in Connecticut dramatically demonstrates, there is no more effective way to lower long distance prices than to allow the incumbent LEC to compete. Consumers throughout the country -- particularly residential consumers -- could quickly enjoy benefits that today are restricted to a few. IntraLATA toll competition would also intensify due to dialing parity and the spillover effects of interLATA competition, a fact confirmed by the sharply declining cost of intrastate calls in Connecticut.

By contrast, the putative benefits from loading additional requirements on Bell companies are pure speculation. Even with federal micro-management of local competition, CLECs may nevertheless continue to stay out of those markets in states such as South Carolina. Indeed, the South Carolina Public Service Commission ("SCPSC") has found that CLECs will not serve small business and residential consumers in any serious way until BellSouth is allowed to spark "one-stop shopping" competition through section 271 relief. Thus, suggestions that this application requires the Commission to choose between local and long distance competition are false: Sections 251, 252, and 253 open local markets to potential entrants without regard to section 271, and Bell company entry into interLATA services will encourage actual entry.

It is also time for this Commission to fix another glaring defect in the section 271 process by formalizing the important role of state commissions pursuant to section 271(d)(2)(B). The Commission's prior failure to acknowledge that state findings warrant deference because of the state commissions' statutory responsibilities and special expertise constitutes an open invitation to losers in state proceedings. These disappointed parties predictably will ask the FCC to judge the investigative methods and deliberative processes of its fellow regulators.

Such inquiries violate both the requirements of the Communications Act and basic constitutional principles. From a practical standpoint, moreover, attempts to assess the confidential inner workings of state commissions only invite uninformed accusations. Consider the arguments made in this proceeding. CLECs and the DOJ alike have maintained for over a year that the states should conduct lengthy pre-investigations of Bell company interLATA applications, and that the delay occasioned by these proceedings would be more than offset by the added weight the states' evaluations would carry. Yet, in opposing BellSouth's application, the CLECs now argue that the SCPSC's investigation should be simply ignored. And the DOJ, even more bizarrely, now suggests that the SCPSC's determinations (which are directly contrary to the Department's own) are deficient precisely <u>because</u> they arise from an investigation conducted in the months <u>prior</u> to BellSouth's application — just as the Department itself had recommended. Such opportunistic attacks on state commission proceedings are the inevitable result of this Commission's failure to safeguard the state commissions' central role under section 271.

Whatever reasonable procedures the Commission adopts, it will find that BellSouth has satisfied the requirements of the Act and there is no longer any basis for federal barriers to entry into interLATA services in South Carolina.

BellSouth satisfies the requirements of section 271(c)(1)(B) because CLECs have not made genuine efforts to serve business and residential customers in South Carolina on a facilities basis. The CLECs' efforts go no further than submitting misleading or ambiguous statements in an effort to block competition from BellSouth, without making any investments in serving customers beyond urban business districts.

BellSouth also offers interconnection and network access in accordance with all fourteen requirements of the competitive checklist. Although BellSouth has not acceded to every negotiating demand of every CLEC, it has made legally binding commitments to provide every checklist item in accordance with the Act's requirements. Wherever CLECs have been ready to take advantage of these offerings, BellSouth has furnished them on nondiscriminatory terms that allow efficient CLECs to compete. True, CLECs thus far have not been ready to take all of BellSouth's offerings in large quantities, but as this Commission has confirmed, that is immaterial under section 271. If some of BellSouth's offerings remain "paper promises," that is because the CLECs who argue most vociferously against approval of BellSouth's application are paper competitors.

When BellSouth enters the interLATA market, it will do so in compliance with all requirements of section 272. Opponents of BellSouth's application offer no evidence to the

contrary, but merely seek to convert the requirement of future compliance with section 272 into a current barrier to long distance competition.

Finally, there can be no serious dispute that BellSouth's entry into the interLATA services market would increase competition and thereby serve the public interest. All arguments to the contrary rest on the incorrect premise that fulfilling CLECs' wish lists is more important than saving consumers billions of dollars per year on their long distance bills. That is wrong as a matter of law, for the CLECs' demands are beyond the bounds of the 1996 Act. And it is wrong as a matter of policy, because giving CLECs greater advantages over incumbents will not cause them to re-write their plans for serving profitable business customers in the major urban centers. As the SCPSC has held, the only way to trigger broad-based local competition in South Carolina is to let BellSouth light a spark by providing bundled packages of telecommunications services to ordinary consumers. BellSouth is eager to play that role and it is qualified to do so under the congressional standard. This Commission should side with consumers and the State of South Carolina and do what Congress intended -- let competition go forward.

TABLE OF CONTENTS

BELLSOUTH
SOUTH CAROLINA § 271 REPLY

APPENDIX
TABLE OF CONTENTS

TAB	DESCRIPTION
16.	SCPSC Docket U-22215, Tr. at 84 (June 27, 1997) (testimony of Richard Knight)
17.	General Subscriber Service Tariff § A5.6.1 (effective Apr. 9, 1996)
18.	Order Approving Tariff No. 84-804, Application of Southwestern Bell Telephone and Telegraph Company to Amend Certain Portions of its General Subscriber Services, Private Line Services and Access Services Tariffs so as to Allow Limited Contractual Services. (Oct. 5, 1984)
19.	Comments of Bell Atlantic on Petitions for Reconsideration, CC Docket No. 97-137 (Oct. 9, 1997)
20.	Address by Joel Klein, Assistant Attorney General, Antitrust Division, The Race for Local Competition: A Long Distance Run, Not a Sprint, Application 96-04-038 (Cal. PUC Nov. 19, 1996)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina	CC Docket No. 97-208

To: The Commission

REPLY BRIEF IN SUPPORT OF APPLICATION BY BELLSOUTH FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN SOUTH CAROLINA

BellSouth has satisfied all prerequisites for interLATA relief established by section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act" or "Act"). Although opponents cite numerous areas in which they want additional concessions, unmet demands are not evidence of any statutory failure by BellSouth. Nor do CLECs' business plans undermine BellSouth's evidence of statutory compliance or the SCPSC's findings to the same effect. BellSouth is not required to show that CLECs are using the facilities and services it makes available through its Statement (see Application App. B at Tab 1) and its SCPSC-approved interconnection agreements. Indeed, CLECs' failure to enter local markets in South Carolina is entirely irrelevant to this application save for two respects: it enables BellSouth to file for interLATA relief under "Track B," 47 U.S.C. § 271(c)(1)(B), and it confirms the accuracy of the SCPSC's determination

that local competition has been slowed, not sped, by BellSouth's inability to compete as a full-service provider.

This Commission is at a fork in the road. It can stay on the path suggested by the Michigan Order[1] and use section 271 proceedings to opine upon every contested issue that arises between CLECs and incumbent LECs in the negotiation and arbitration processes, without suggesting any real prospect of interLATA relief for Bell companies that do what is required under the checklist. Under that approach, long distance consumers will pay more, local markets in states such as South Carolina will see less competitive entry, and there will be no guarantee of offsetting benefits of any kind.

Alternatively, the Commission can apply section 271 in a manner that serves the deregulatory goals underlying the Telecommunications Act.[2] It can open interLATA markets to full competition as soon as local markets are themselves open in accordance with the criteria established by Congress, then let market forces work. This second approach is certain to bring lower long distance prices and enhanced intraLATA toll competition due to 1+ dialing, and likely will trigger accelerated local entry by such carriers as AT&T and MCI. Nor will there be any loss of local competition down the road. The state commissions will retain their powers to ensure the openness of local markets under the Communications Act, while this Commission will be able to

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[1] Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC No. 97-298 (rel. Aug. 19, 1997) ("Michigan Order").

[2] See S. Conf. Rep. No. 104-230, at 1 (1996) ("Conference Report") (stating purposes of 1996 Act).

police Bell company compliance with the conditions of interLATA entry pursuant to the enforcement mechanisms of section 271(d)(6), among other powers.

In short, this Commission can require long distance callers to pay more while it attempts to devise and implement a central plan for local telecommunications markets, or it can immediately cut long distance bills (by 15-20 percent for many customers, based on SNET's rates in Connecticut) and let local competition evolve at whatever pace is supportable in a free market. Approval of BellSouth's application for interLATA relief in South Carolina would be the best way to start down the only course that is consistent with the Telecommunications Act and that would best serve the public interest.

DISCUSSION

I. THE SCPSC'S FINDINGS SHOULD BE ACCORDED GREAT WEIGHT

State commissions possess "a unique ability to develop a comprehensive, factual record regarding the opening of the BOCs' local networks to competition." Michigan Order ¶ 30. Congress recognized that "unique ability" and accordingly gave the state commissions a special role in advising the Commission on local competition matters pursuant to section 272(d)(2)(B).

In order to comply with its obligations under section 271(d)(2)(B), the SCPSC conducted a four-month investigation of BellSouth's application to offer interLATA service in South Carolina. As detailed in the SCPSC's Comments in support of BellSouth's application, the SCPSC conducted a full evidentiary proceeding that gave all parties an opportunity to present and elicit relevant evidence. SCPSC at 2-5. The SCPSC in fact followed the so-called "best practices" recommended by the National Association of Regulatory Utility Commissioners as a

model for such state proceedings.[3] Having collected all relevant information through model procedures endorsed by the CLECs themselves,[4] the SCPSC then "carefully weigh[ed] all the available evidence" and "unanimously, by a 7-0 vote, concluded that BellSouth had satisfied the Act's requirements under Section 271(c)." SCPSC at 4-5.

The SCPSC produced exactly the sort of "detailed and extensive record" that the Commission called for in its Michigan Order. Michigan Order ¶ 30. Regardless, CLECS that are unhappy with the SCPSC's conclusions seek to cast doubt on the SCPSC's investigation through wholly unsupported attacks on the SCPSC's integrity. AT&T, for instance, alleges that the SCPSC conducted "Potemkin-proceedings" in which it "did not independently consider the record but 'rubber-stamped'" BellSouth's proposed order. AT&T at 47. MCI likewise insists that "there can be no confidence in the integrity of the process," and that therefore "no deference is due to the SCPSC." MCI at 10. ACSI and Sprint make similar accusations. See ACSI at 21; Sprint at 34.

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[3] See generally Letter from Cheryl L. Parrino, President, NARUC, et al. to Richard C. Notebaert, Chairman and CEO, BellSouth Corporation (Aug. 1, 1996) <www.att.com/publicpolicy/handbook/chap5>.

[4] For example, the Executive Director of the Competition Policy Institute ("CPI"), a CLEC mouthpiece, praised NARUC for its "best practices" recommendations, saying, "[y]our efforts to obtain notice and information in advance of an RBOC filing will result in a more meaningful consultative role for the state commissions." Communications Daily, Aug. 14, 1996, at 5. CPI was created by the incumbent long distance carriers and receives virtually all of its funding from AT&T, MCI, the Telecommunications Resellers Association, and the National Cable Television Association. See Hearing Testimony of Ronald J. Binz, Joint Application of Pacific Telesis Group and SBC Communications Inc., Application 96-04-038 (Cal. PUC Nov. 19, 1996), an excerpt of which is attached hereto as Exhibit 11. CPI has never received "any funding from actual consumers," id. at 2612-15, and its policy positions reflect "input from its corporate sponsors . . . [AT&T and MCI]," id. at 2624, 2626.

These complaints are registered by CLECs that fully participated in the SCPSC's investigation by submitting documents and testimony to the SCPSC and forcefully arguing their positions. At no point during the SCPSC's proceedings did any of these CLECs utter a single complaint about the procedures that they now claim were irredeemably flawed. It is difficult to understand, moreover, how a proceeding that lasted four months and generated a record that consisted of over 1600 pages of live and prepared sworn testimony and another 1500 pages of pleadings could be called a "rubber stamp." See Application App. C (reproducing SCPSC record).

Having fully participated in the SCPSC's proceeding without any claim of bias or inadequate investigation, the CLECs can cite only the SCPSC's written decision of July 31, 1997 (issued after a unanimous vote taken on July 24 which established the substance of the SCPSC's decision) as supposed evidence of unfairness. According to AT&T, for instance, the SCPSC somehow revealed a dark secret about its proceedings by issuing — in AT&T's words — "a verbatim, commission-stamped recirculation of BellSouth's proposed order." AT&T at 1. One might not guess from such seeming indignation that AT&T also submitted a proposed order to the SCPSC — a 51-page order that AT&T hoped the SCPSC would adopt. See Application App. C at Tab 73 (proposed order). Indeed, AT&T and the other CLECs get so lost in their rhetoric that they misrepresent the facts. The SCPC did not "recirculat[e]" BellSouth's proposed order. Instead, the SCPSC agreed with AT&T and the other CLECs on one issue and revised BellSouth's proposed order to incorporate AT&T's position on that point. Compare Compliance

Order[5] at 67-68 (excluding BellSouth evidence) with AT&T's Proposed Order at 3-4 (urging same). The SCPSC likewise revised BellSouth's proposal in accordance with the SCPSC's "capped" true-up process for interconnection and network element rates. Compare Compliance Order at 68 (ordering modification of Statement) with Proposed Order of BellSouth Telecommunications, Inc. at 67 (proposed ordering clauses). The CLECs therefore are not genuinely outraged that the SCPSC partially adopted BellSouth's proposed order, but only that the SCPSC did not adopt more of AT&T's proposed order.

Nor may the Commission selectively ignore the SCPSC's conclusions regarding BellSouth's compliance with section 271(c) in favor of the DOJ's analysis. It is the State commission — not the DOJ — to which the FCC must look "in order to verify the compliance of the Bell operating company with the requirements of subsection (c)." 47 U.S.C. § 271(d)(2)(B). Even DOJ makes no claim that it has a better view of South Carolina's local markets from Pennsylvania Avenue than the SCPSC does from the State capital. On the contrary, DOJ acknowledges the particular expertise of the state commissions and the "important role" assigned to them under section 271, and therefore "urge[s] the Commission to take any appropriate steps" to safeguard that role. DOJ at 11 n.21.

DOJ nevertheless seeks to avoid obvious comparisons between the SCPSC's expertise about South Carolina markets and the DOJ's lack of expertise; between the SCPSC's extensive record investigation and the DOJ's undocumented inquiry; between the SCPSC's critical

[5] Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, Entry of BellSouth Telecommunications, Inc., into InterLATA Toll Market, Docket No. 97-101-C, Order No. 97-640 (SCPSC July 31, 1997)

assessment of live testimony and the DOJ's use of an outside consultant who is simultaneously on CLEC payrolls;[6] and between the SCPSC's comprehensive decision covering all relevant issues and the DOJ's spotty discussion of a few topics.[7] To avoid such comparisons, DOJ highlights a few issues that it believes were inadequately addressed by the parties during the state proceedings, such as the activities of ITC DeltaCom and the sort of assistance CLECs (in the future) may request from BellSouth in connection with their combinations of unbundled network elements ("UNEs"). DOJ at 11, 18-20; see Reply Affidavit of Alphonso J. Varner ¶¶ 28-30 (discussing opportunities to comment on UNE combinations) (attached hereto as exhibit 9). DOJ suggests that it has a more current vantage point on these issues than the SCPSC. Yet DOJ has been a leading advocate of holding state proceedings in advance of section 271 applications.[8] Having urged that approach, it is grossly unfair for the DOJ to attempt to avoid the SCPSC's findings by implying that they are out of date.

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[6] See infra note 36 (discussing DOJ consultant Michael Friduss).

[7] While DOJ believes that it has the luxury to "express no view as to BellSouth's compliance or non-compliance with checklist requirements," DOJ at 13 n.23, the SCPSC took its statutory responsibilities seriously and addressed each checklist item in full detail. There can be no doubt that on issues DOJ declined to consider, the Commission will have to reach its decision without DOJ input. The Commission does not share the DOJ's leeway to dabble, but rather has a statutory obligation to review each of the issues presented in this application. See MCI Telecommunications Corp. v. FCC, 917 F.2d 30, 41 (D.C. Cir. 1990) (agency "cannot simply decline to resolve an issue" it has asked the parties to present without providing an explanation).

[8] See NARUC Writes to BOCs Regarding Section 271 Applications, Washington Telecom News, Aug. 12, 1996 (quoting Deputy Assistant Attorney General for Antitrust David Turetsky as encouraging "[s]tate proceedings prior to the filing of Bell long-distance entry applications which are effective in building a factual record").

DOJ's try at running around the SCPSC's Compliance Order is all the more unacceptable given that DOJ chose not to appear in the State proceedings. DOJ "strongly encourages all interested parties to participate fully in state 271 proceedings," DOJ at 11 n.21, but apparently considers itself exempt from that call. If DOJ really believes it is more capable than CLECs of identifying the issues that matter to new local carriers, then it has an obligation to appear before state commissions. But if it fails to appear, DOJ cannot hold the consequences of that failure against the state commission.

Far from being subject to criticism, the SCPSC's investigation should be recognized as a model for other state commissions. The SCPSC has fulfilled its obligation under section 271(d)(2)(B) by producing a comprehensive record and detailed conclusions. Those conclusions reflect the SCPSC's knowledge of local markets in South Carolina, which is simply unavailable to this Commission or the DOJ. The Commission must now fulfill its obligation under section 271(d)(2)(B) by affording the SCPSC's determinations the deference that they deserve.

II. BELLSOUTH IS ELIGIBLE TO APPLY FOR INTERLATA RELIEF UNDER SECTION 271(c)(1)

The SCPSC's unanimous decision included a finding, reiterated by the SCPSC in its Comments, that none of BellSouth's competitors "are taking any reasonable steps towards implementing any business plan for facilities-based local competition for business and residen[tial] customers in South Carolina." Compliance Order at 19; SCSPC at 5-6. Thus, while the Department of Justice claims that the "SCPSC refused to consider whether BellSouth was eligible to apply under Track A or Track B," DOJ at 10, the SCPSC in fact expressly resolved the key issue regarding BellSouth's eligibility under section 271(c)(1).

In an effort to overcome this finding, BellSouth's opponents twist both fact and law. They blame BellSouth for their own business decisions to favor more profitable markets and argue that CLECs can go as slowly as they wish in South Carolina while still precluding BellSouth from receiving interLATA relief. This Commission's interpretation of section 271(c)(1), however, reflects that "[a] BOC's entry into interLATA services should not be delayed because of the business strategies of competitors." DOJ at 3. If CLECs have not taken "reasonable steps" toward becoming Track A "competing providers," they cannot foreclose Track B.

The record reflects that in South Carolina, CLECs have not taken such "reasonable steps." Potential competitors' newly minted (and totally unsupported) assertions that they will compete someday are too little, too late, to overcome the South Carolina PSC's finding regarding a matter solidly within its special expertise. The Commission should not permit CLECs to game the section 271 process with last-minute proclamations intended to sink BellSouth's application rather than launch local competition in South Carolina.

A. BellSouth's Opponents Seek to Read the "Reasonable Steps" Requirement Out of the Commission's Oklahoma Order

By its own account, the Commission has struck a compromise between the Bell companies' interpretation of section 271(c)(1)(B) and the CLECs' interpretation.[9] On one hand, various Bell companies argued based on the plain language of the law that only an interconnection

[9] See Memorandum Opinion and Order, Application of SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, FCC No. 97-228, ¶ 56 (rel. June 26, 1997) ("Oklahoma Order"), appeal pending sub nom. SBC Communications, Inc. v. FCC, No. 97-1425 (D.C. Cir. to be argued Jan. 9, 1998).

request from an actual "competing provider" described in section 271(c)(1)(A) could foreclose Bell company entry under Track B. Id. ¶¶ 24, 26. On the other hand, CLECs argued that any request for interconnection forecloses Track B. Id. ¶ 26. Rejecting both positions, the Commission held that a request can preclude an application under Track B if the request comes from a "potential competitor" that (1) has made a request which will "lead to the type of telephone exchange service described in section 271(c)(1)(A)" and (2) is "taking reasonable steps toward implementing its request in a fashion that will satisfy section 271(c)(1)(A)." Id. ¶¶ 54, 57, 58.

Although CLECs have defended the Commission's compromise in the courts,[10] they reject it in this proceeding and instead reargue their extreme position that any request for interconnection can foreclose Track B. Wholly ignoring the holding of the Oklahoma Order, MCI and ACSI argue that there is no "reasonable steps" requirement and maintain that CLECs cannot be held to an "amorphous standard unilaterally proposed by BellSouth." MCI at 7; see ACSI at 13. AT&T likewise rejects the Commission's compromise position, arguing that any request will foreclose Track B unless it falls within the narrow safety-valve exception (regarding bad-faith negotiations and missed implementation deadlines) set out in the final sentence of section 271(c)(1)(B). AT&T at 49. These carriers miss the point that, regardless of whether a particular requester happens to be bound by a formal implementation schedule, CLECs nonetheless must satisfy the Commission's definition of a "potential competitor" — which includes the "reasonable

[10] See Brief of [IXC] Intervenors in Support of the FCC, SBC Communications, Inc. v. FCC, 97-1425 (D.C. Cir. Sept. 19, 1997).

steps" requirement — for its request to foreclose Track B. See Oklahoma Order ¶ 58 (distinguishing statutory safety-valve exception from additional "reasonable steps" requirement).

B. Belated Promises of Future Service Are Not "Reasonable Steps"

BellSouth's opponents seek to evade the Oklahoma Order not only by denying the existence of the "reasonable steps" requirement, but alternatively by reading that test so laxly as to render it meaningless. The Commission established the "reasonable steps" requirement because any other reading of Track B would "allow potential competitors to delay indefinitely BOC entry" by requesting interconnection and then "failing to provide the type of telephone exchange service described in Track A." Oklahoma Order ¶ 58. If the requirement is to fill its role, the Commission must ensure that the "reasonable steps" test is not so flexible as to allow CLECs to defeat Bell company applications with carefully qualified promises of Track A competition sometime in the future.

The Commission accordingly should take several measures to confirm its protections against "the incentive of potential local exchange competitors to delay the BOCs' entry into in-region interLATA services." Oklahoma Order ¶ 57. First, the Commission should make clear that (notwithstanding the claims of ALTS and others) BellSouth's eligibility to apply under Track B turns on the activities and intentions of CLECs three months before BellSouth filed its application (i.e., on June 30, 1997), not on the date of filing or the date of the Commission's decision. Having experienced first-hand the improper lobbying tactics used by interexchange

carriers during debates on the 1996 Act,[11] Congress certainly expected that these same carriers would, if allowed, tailor their interconnection requests just to thwart Bell company applications under Track B. Congress addressed this possibility by "freezing" CLEC requests as of three months before the Bell company's application. 47 U.S.C. § 271(c)(1)(B). If no qualifying request had been made by that time, the Bell company would know that it could file its statement of generally available terms and conditions with the state commission and then, if the statement was approved or allowed to take effect by the state commission after 60 days, see 47 U.S.C. § 252(f)(3), file its federal application. Once the process of a Track B application has been initiated with a state filing, CLECs cannot sabotage it by purporting to alter their entry strategies. Otherwise CLECs could close Track B at will. A CLEC could, for example, nullify the work of the Bell company by making a strategic interconnection request the day the Bell company's statement of terms and conditions is approved at the state level. Or, if the CLEC had already requested interconnection, it could announce a change in business plans up to the day of the BOC's federal filing. Through the three-month window of Track B, Congress ensured that such gamesmanship would not defeat its plan for opening interLATA markets.

Second, the Commission should make clear that "reasonable steps" require actions and not just words. The recent history of the telecommunications business highlights that CLECs' announcements regarding their plans to enter the local market do not come with guarantees. If the Commission accepted press releases as a substitute for concrete steps in the marketplace, then

[11] See, e.g., Mike Mills, The Lines are Drawn; All the Parties Are in Position as D.C.'s Telecommunications Bill Heads for a Vote, Washington Post, June 3, 1996, at F-1 (describing sham "grass roots" campaign by AT&T).

the "reasonable steps" requirement would be reduced to a "plausible puffery" test. Consumers would be denied the lower interLATA prices Bell company competition will bring, yet they still would have no genuine promise of facilities-based competition among local service providers. Track B was included in the Act to avoid precisely this lose-lose situation.[12]

C. No CLEC Has Taken "Reasonable Steps" in South Carolina

The CLECs' efforts to defeat BellSouth's Track B application clearly demonstrate the importance of strictly applying the reasonable steps standard. They reveal that competitors will pursue any opportunity to block competition from Bell companies — provided, that is, that they do not actually incur any obligation to serve customers who do not fit in to their business plans.

The Department of Justice indicates that "a difficult predictive judgment . . . is required here with respect to ITC DeltaCom" because "DeltaCom provides little beyond its statement that it intends to offer residential service, and its statement is silent as to when it intends to do so." DOJ at 7-9. But when the Commission examines all the facts, and not just statements aimed at defeating BellSouth's application, its "difficult predictive judgment" will become relatively easy.

ITC DeltaCom has not participated in this proceeding, just as it did not participate in the SCPSC's inquiry. Yet in affidavits filed by ALTS, ITC DeltaCom promises that it will compete someday for residential customers in South Carolina. See Moses Aff. That promise is legally insufficient. Mr. Moses does not claim that ITC DeltaCom had formed its newly announced

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[12] See Conference Report at 148 (Track B "is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market.").